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Thank you for inviting me to appear before this Subcommittee. My academic training is in political geography and I have been doing research on Bosnia-Herzegovina (BiH) for almost a decade. The last few years I have worked on a National Science Foundation funded project on the returns process with a colleague (Dr Carl Dahlman, University of South Carolina). We are working on a book on this subject. As we approach the 10th anniversary of the Dayton Peace Accords, I would like to share with the subcommittee some of what I have learnt from research in Bosnia-Herzegovina that is relevant to the agenda before you.

I. The Weaknesses of the Dayton Agreement.

The Dayton Peace Accords were the consequence of Euro-Atlantic security structures learning from failure. Initially, Europe and America treated the Bosnian war as a localized humanitarian crisis and not a regional strategic challenge to the future expansion of NATO and the European Union. But Bosnia was and remains today a strategic challenge because it is a *strategic symbol* of Europe's ongoing struggle to overcome the use of exclusivist nationalism for extremist and anti-democratic ends. It is important that we keep this initial lesson in mind: Bosnia is a strategically symbolic place.

While the Dayton Agreement is hailed by some as the triumph of hardnosed pragmatic diplomacy, it is worth underscoring the weaknesses of the agreement:

1. The Dayton Peace talks featured negotiations between perpetrators and victims, between those who initiated the war (the Milosevic regime and its local allies), those who exploited it (the Tadjman regime and extreme Croat nationalists), and those who suffered most from it (ordinary non-nationalist Bosnians, particularly Bosniaks). Slobodan Milosevic had a role at Dayton even though Western officials knew full well that his regime was a chief instigator of the Bosnian war. This triumph of short term pragmatism over long term principle did not serve Euro-Atlantic structures well (as the subsequent need to go to war against the Milosevic regime over Kosovo demonstrated).
2. The General Framework Agreement rewarded ethnic cleansing by dividing Bosnia into ethnoterritorial entities which were given state-like administrative powers. In recognizing Republika Srpska, it legitimated a wartime political entity with state aspirations that was cleared of non-Serbs by murder, forced displacement and acts of genocide.
3. The Dayton Peace Agreement mixed Yugoslav ('constituent peoples') and Western legal principles ('citizens'). It was marked by contradictions between its empowerment of ethnoterritorial polities and its articulation of principles that, if enacted, would undermine these ethnoterritories. An example is Annex 6 (which mandates cooperation with ICTY), Annex 7 (the right of the displaced to return to their pre-war homes) and the embedding of the BiH Constitution in international conventions and treaties. The recent Venice Commission's Opinion on the Constitutional Situation in BiH (March 2005) documents clear tensions between the BiH Constitution and the European Convention on Human Rights.

4. The Constitutions of BiH and its entities were forged during wartime and never received democratic legitimation through state-wide referenda. The Venice Commission correctly notes that “the Constitutions of BiH and the FBiH were political compromises to overcome armed struggle and the main focus was their contributions to the establishment of peace. They were negotiated in foreign countries and in a foreign language and can in no way be considered as reflecting a democratic process within the country” (p. 16).
5. The Dayton Peace Accords saddled BiH with an unwieldy bureaucratic structure of governance. BiH became a weak central state with two strong entities, ten cantons and a special district (Brcko), under military occupation and international supervision. It had 13 different constitutions, prime ministers, assemblies and law making institutions. BiH thus has four or five levels of governance – (i) OHR, (ii) state, (iii) entity, (iv) canton (except RS), and (v) *opstina* [municipality/county] -- all to rule less than four million people. In sum, the Dayton Peace Accords created what some have termed an ‘ungovernable country,’ a cumbersome excess of administrative offices for political party capture and patronage. The Venice Commission properly notes that “there are too many bureaucracies and too many posts for politicians.”

Dayton ended the war in BiH but did not resolve the conflict. It was the product of a particular geopolitical conjuncture. It marked a significant compromise of the principle of modern civic democratic politics within a unified polity. This has hindered the development of BiH as a modern effective and coherent state since then.

II. One Million Returns: Successes through OHR lead State Building and Imposed Laws.

Nevertheless, the international community has achieved some remarkable success in Bosnia-Herzegovina in the years since Dayton. A central achievement has been the level of displaced person and refugee returns. Here are the salient statistical facts:

- With a pre-war population of 4.4 million, over one million persons were made refugees by the Bosnian war and another million internally displaced within the country. Additional displacement of over 60,000 people occurred after the transfer of territories between the two entities.
- In September 2004, the UNHCR and BiH Ministry of Human Rights and Refugees announced that over one million persons had return to their pre-war homes in Bosnia-Herzegovina. This represents a landmark achievement for the international community and the Bosnians who have worked hard to make this happen.
- As of 31 January 2005, there were 1,005,958 returns. 441,000 are refugees who have returned from abroad while 565,028 returnees were internally displaced persons.
- The geopolitically significant figure is the number of minority returns: 448,880. These are persons who have crossed the IEBL to return to their homes in an entity where they are now a minority.
- Most minority returns are Bosnian Serbs to the Federation (269,367 so far), predominantly to Sarajevo, but many Bosniaks have returned to Republika Srpska (158,131). The largest minority return areas are: Sarajevo and its suburbs; western Bosnia around Prijedor and Banja Luka; and the northeast opstina of Dobož, Brčko, Bijeljina, and Zvornik. Others areas of notable return are Mostar, in southern Bosnia, and some of the central Bosnian *opstine* where total return numbers are small but significant in relation to the local population.
- In all of these areas, minority returns now constitute a presence in villages and towns ethnically cleansed during the war. In only a few places, however, have minority returns tipped the ethnic balance in their favor as most returns are to *opstine* where they are outweighed by resident and displaced persons of the locally dominant group. For example, in one of our research sites, the northeastern *opstina* of Zvornik, the

return of over 13,000 Bosniaks is set against a pre-war Serb population of 28,000 enlarged by an additional 30,000 displaced Serbs. Before the war, Bosniaks were the majority in Zvornik. In contrast, a relatively small number of Serb minority returns to southwest Bosnia have reestablished their pre-war majority in three *opstine* (Drvar, Glamoc and Bosanski Petrovac). Many other *opstine*, despite some minority returns, show the results of ethnic cleansing through the persistence of homogeneous local populations.

- The rate of return has slowed significantly in the last year (over 14,000 minority returns in 2004 compared to over 102,000 in 2002). However, some of the most traumatic places for returnees in Bosnia – Srebrenica, Bratunac and Zvornik for Bosniaks – are active sites of return. Serbs are also slowly returning to Tuzla.

The returns of over 1 million people to their pre-war homes after a war as nasty as the Bosnian one is, as I mentioned, a remarkable achievement. This success, obviously, did not come overnight. It can be attributed to 5 central factors:

1. Security & Strategy: State-building was only possible in Bosnia because the country was at peace and demobilization occurred. IFOR/SFOR made this happen and created the possibility for change. The international community took Annex 7 of the Dayton Peace Accords seriously and correctly grasped that an extensive and effective returns process was central to building peace in Bosnia. It invested in this conviction. Returns demonstrated that the ethnic cleansers had not won, that the IEBL was not a border, and that people could live together again despite the horrors of the war. The international community was the decisive force that allowed Bosnia to move beyond the wartime politics of violent coercion to recover some of its multiethnic traditions and history.
2. International Cooperation & Coordination: After an initial period of disorganization, the international community, under the leadership of the Office of the High Representative, developed an inter-agency Reconstruction and Return Task Force that

was a clearing house for returns strategy and the returns process. This allowed the development of a comprehensive approach to the returns challenge and brought together reconstruction funds from a number of different countries.

3. **Localized Capacity:** The international community established itself at the local level in Bosnia's *opstine*. IFOR, the OHR, the UNHCR and the OSCE all invested in local offices. This allowed them to take on the localized form (personnel and structures) of ethnonationalist obstructionism to return.
4. **The Imposition of Standardized National Laws:** The acquisition of the Bonn Powers by the OHR was absolutely crucial in tilting power at the local level towards the agenda of the international community. The OHR imposed a national license plate and a property law implementation process (PLIP) that facilitated a dramatic rise in minority returns numbers from 1999 to 2002.
5. **Developing Local Ownership of Process:** Returns would not have happened without the desire of the displaced to return. Displaced person associations were crucial in disseminating information and organizing the returns process among returnees. Entity and local authority politicians had to be persuaded that returns were inevitable but when this occurred – by 1998 with Dodik as Republika Srpska prime minister -- their active participation in facilitating returns was necessary in allowing them to happen.

While over one million returns is an impressive achievement, it is worth remembering that there are limits to the returns process (Ó Tuathail and Dahlman, 2004).

III. The Limits of Returns.

1. **Inevitable Urbanization.** It is unrealistic to assume that Bosnia's demographic structure in 1991 can be restored. Ethnic cleansing was a war crime but also a traumatic and compressed forced urbanization. Young families displaced to cities

developed networks there. Even if they have returned to their villages and towns across the IEBL, they retain links to urban places. In some instances, it is the older family members who return to the family home, with younger family members remaining in more service-rich urban space.

2. **Ethnic Engineering.** Facing the inevitability of return, many ethnonationalist organizations devoted their energies to ‘locking in’ their ethnic dominance in certain localities through a strategy of land allocations for displaced peoples. In this way, even if returns did materialize, returnees would never become an ethnic majority in the community again. Ethnic engineering began in Herzegovina among Bosnian Croats and is practiced, to a debatable degree, by all ethnic communities in Bosnia. Obstructionism and violence against returns are still found in parts of Bosnia.
3. **The Funding Gap And Local Ownership Questions.** The returnee policy process has been turned over to local institutions: a state-level Ministry of Human Rights and Refugees (MHRR), a Commission for Refugees and Displaced Persons, a Return Fund, and *opstina* level commissions for development and integration. How these will function, particularly given diminishing aid resources, is an open question. Over 23,000 families registered to return with the MHRR but there are not enough funds available to allow them to do so. The Return Fund still has not been fully capitalized by BiH entities. In March, the UNHCR called on the Bosnian Federation to ensure sufficient support for returns in 2005 by allocating what it was obliged to allocate to the Return Fund (BAM 1.35 million). A Norwegian NGO report on returns in BiH last month concluded that “the continued involvement of the international community is crucial to ensure the sustainability of returns in the country” (Global IDP Project 2005).
4. **Education & Pensions.** Education is still organized along ethnic lines in parts of Bosnia; there are still 52 “two schools under one roof” where children are segregated according to ethnicity (Global IDP Project 2005). This has long been a serious

obstacle to return though progress is slowly being made on this issue. Also divergent pension benefits between the entities have been a disincentive to returns.

5. Economic Sustainability. The major outstanding obstacle to return is lack of employment. The nominal unemployment rate in the Federation is 45.4% (September 2004) and is thought to be higher in RS. BiH enjoyed real GDP growth of 3.5% in 2003 but aggregate real GDP is estimated at only 72% of what it was in 1990 (World Bank, 2004, 25). GDP per capita in Bosnia in 2002 was estimated at \$1,671 by the World Bank; 15% of the FBiH and 25% of the RS population live below the poverty line (19% of total population, as defined by the Living Standard Measurement Survey of November 2001; see UNDP, 2005, 20). Discriminatory employment in those industries that remain productive is a problem. In *some* instances, return is viable because people can provide for themselves if they have agricultural land free of landmines. For example, in one town, my colleague and I interviewed former factory workers who are now returnees learning to become farmers (they receive support for their food cooperative from USAID).

Has ethnic cleansing been reversed? No, it has not. Bosnia is still scarred by the legacy of this criminal ‘nation-building’ practice. But the project of partitioning BiH into separate ethnoterritorial spaces has not succeeded either. Between 1 in 6 and 1 in 9 persons (depending on which estimation of the population one uses) in RS are non-Serbs. Demographic shifts associated with returns highlight the anachronistic nature of the ethnic and territorial voting provisions of the BiH Constitution. Voters in Republika Srpska, for example, can only vote for the self-identifying Serb member of the BiH presidency (see section V, 2 of the Venice Commission’s recent opinion).

IV. From Dayton to Brussels: The Contradictions of Embedding Bosnia in Euro-Atlantic Structures.

The grand strategy of the international community is to fully incorporate and embed Bosnia into modern Euro-Atlantic geopolitical space. In the words of European Union High Representative (Foreign Minister designate), Javier Solana, the goal is to move from ‘the era of Dayton’ to ‘the era of Brussels.’ This OHR led grand strategy proceeds from analysis of Bosnia as having two central challenges: (i) the challenge of removing war and violence as an option from its political life, and (ii) the challenge of post-socialist transition to a capitalist market society as the basis for future economic prosperity. The response is an embedding of Bosnia within processes and procedures that lead towards eventual NATO and European Union membership. The goals can be plainly represented by the OHR as peace and economic prosperity (Ó Tuathail, 2005). The process of starting along the path towards these eventual goals is one that has produced some innovative and creative state building on the part of the OHR, particularly under the leadership of the current OHR, Paddy Ashdown.

The OHR’s two track strategy, while ostensibly avoiding any formal revision of Dayton, is constructively transforming that Agreement as it seeks to embed BiH within NATO and EU structures. But, the strategy is bringing to the surface structural contradictions that throw into question the current Dayton framework. This process is accompanied by political instability; even more is likely as the contradictions sharpen. However, I would argue that this process can, if handled deftly and judiciously, be a productive one and offer Bosnia’s citizens a way beyond wartime Dayton structures towards the modern state structures it needs for eventual membership in the European Union.

Lets us consider the first contradiction:

1. War Criminals and Republika Srpska: The Partnership for Peace Process.

The road to Brussels runs through the Hague. Cooperation with the ICTY and the prosecution of war criminals is about the very nature of the democratic society the international community is trying to cultivate in South-East Europe. Ratko Mladić and Radovan Karadžić are the ‘founding fathers’ of Republika Srpska and the polity they

presided over was one based on murderous nationalism and rampant criminality. Dayton legitimated that polity but it also mandated cooperation with the ICTY. The OHR's insistence on this cooperation has produced an existential identity crisis within Republika Srpska. This crisis is forcing the political class in RS to confront a dilemma: in order to maintain their entity, they have to confront the war crimes that established it, and turn over their 'founding fathers' and their many accomplices to the ICTY. If the RS is to transcend its past, it needs to make a clean break with it by fully cooperating with the ICTY, and efficiently conducting local war crimes trials (The War Crimes Chamber of the Court of BiH was inaugurated in 9 March 2005).

The war criminal issue, in other words, is not about a few personalities holding up the future of the region. It touches all local communities in Bosnia where the physical and emotional legacy of the war remains. It is about repudiating the past, establishing norms of accountability, and actively choosing a Euro-Atlantic future for the region. This year has demonstrated that the international community's consistent line on cooperation with ICTY is yielding results. The RS has turned over 5 indicted war criminals to the Hague and is slowly confronting some of its foundational myths (others endure). However, it remains to be seen if its 'founding fathers' will be produced and it can transcend its past.

2. The Dayton Structure and the European Union: The Stabilization and Association Process.

The second contradiction is between the Dayton General Framework and BiH's desire to enter the European Union. The EU Feasibility Study makes this clear that Bosnia's wartime divisions (and, by implication, the resulting entities) are a structural problem: "Dealing with these divisions and securing a functioning state is important in the context of a SAA, as *only coherent, functioning states can successfully negotiate an agreement with the EU*" (European Commission, 2003, p. 14, emphasis in the original). The Venice Commission reiterates this point: "The extremely limited responsibilities explicitly granted by the BiH Constitution to the state were insufficient for ensuring the functioning of a modern state" (2005, 4).

In order to enter the European Union, BiH must be a modernized state. It must transcend the Dayton Framework, which is a wartime anachronism. The OHR has played a crucial role in managing the contradiction between ‘Dayton’ and ‘Brussels’ but it is apparent that the bureaucratic and inefficient decision-making processes sanctioned by Dayton are slowing if not stifling the progress of the country. The ongoing political struggles over education, defense reform, pension benefits, government posts, taxation and budgets are evidence of this. An emergent crisis over the financing of bureaucracy – 50% of GDP within BiH goes to this – may foreground the costs of Dayton further. The Venice Commission opinion on the structural defects in current BiH state capacity is clear: “With respect to the EU it is unthinkable that BiH can make real progress with the present constitutional arrangements. The EU will not countenance the kind of delay, indecision and uncertainty that a multiplicity of governments entails” (2005, 8).

Bosnia’s has the possibility of a future in the European Union. There is a political consensus within BiH for the ‘road to Brussels.’ An EU Consultative task force will arrive in BiH in mid May to assess the country’s progress on the 16 requirements of the EU Feasibility Study. If progress is assessed positively, BiH may get a ‘green light’ for talks on a Stabilization and Association Agreement.

But this will require that the country face the fact that it needs a significantly revised constitutional structure. There is some consensus on this within the Bosnian Federation (though the details will probably provoke resistance by vested interests). There is active opposition to this among dominant political parties in Republika Srpska. In order to have a European Union future, they will have to accept diminishment of the RS entity if not its outright abolition (not because it is the RS, but because it is an encumbrance to a modernized EU-ready state; this EU-ready state should be decentralized, with some state-level ministries located in Banja Luka). This raises two crucial questions for the next year or so:

1. Will the political class in Republika Srpska still choose 'the road to Brussels' as it becomes more apparent that this may mean there will be no 'RS in the EU'?
2. Will the international community and EU-enthusiast Bosnians allow the dominant RS political class, and the presumed majority of Bosnian Serb opinion they could mobilize, to dictate the pace or even exercise a veto over its progress on the 'road the Brussels'?

There are serious dilemmas that need to be handled deftly. The OHR and the international community have chosen the path of transforming Dayton from within to make Bosnia EU-ready. They may have to face that fact that this strategy will fail and that a clean break from Dayton may be required.

I would like to suggest that one path towards change is through a state-wide referendum on a new constitutional convention. Voters in all of Bosnia could be asked if they approve of the establishment of a constitutional convention under EU supervision to draft a new constitution to make BiH an EU-ready state (with decentralized ministries). The assumption going into the referendum would be that the entities and the OHR would be abolished together (the latter has to happen anyway if Bosnia is to enter the EU). The referendum could prove divisive, but, if promoted as a choice between the stagnant past and a prosperous future, it could draw significant multiethnic support and create an opportunity for Bosnia to transcend the dysfunctionality of its Dayton-era constitutional structures.

The future of Bosnia will, of course, also be shaped by what happens in the larger region (and the uncertain fate of EU enlargement policies). Progress between the EU and Croatia can help Bosnia isolate Bosnian Croat separatism. Progress between the EU and Serbia could also help (especially with Mladić and Karadžić). The EU accession process, if it can sustain its momentum, can be a catalyst for necessary modernization and economic development in this region. It offers a path of progress from chauvinistic nationalism and the criminal political economy it sanctioned towards more civic democratic polities.

Active, positive cooperation between the United States and the European Union has generated notable achievements in this region over the last decade. It is vital that this continue so that the road to Brussels becomes an irreversible course for Bosnia-Herzegovina and the states of the region.

Thank you for giving me this opportunity to present these arguments before you.

Citations.

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